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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL SANDOVAL,

Defendant and Appellant.

B221558

(Los Angeles County  
Super. Ct. No. GA070490)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Lisa B. Lench, Judge. Affirmed.

Eric R. Larson, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General; Pamela C. Hamanaka, Senior Assistant Attorney General; Lance  
Winters and Robert David Breton, Deputy Attorneys General, for Plaintiff and  
Respondent.

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Manuel Sandoval appeals from the judgment entered following his conviction on two counts of second degree murder with special findings that he personally used a firearm in committing both offenses (Pen. Code, § 12022.53, subd. (d)). On appeal, appellant contends that the 25 years to life firearm enhancements imposed under Penal Code section 12022.53, subdivision (d) must be stricken. He argues that the firearm enhancement was not properly pleaded giving appellant adequate notice of a charge of a *personal* gun discharge enhancement under Penal code section 12022.53, subdivision (d). Appellant claims that only a *principal* gun-discharge enhancement under Penal Code section 12022.53, subdivisions (d) and (e)(1) was pleaded. Appellant contends that because the jury found not true the gang enhancement under subdivisions (d) and (e)(1), the *personal* gun discharge enhancement under section 12022.53, subdivision (d) must be stricken. As we shall explain, appellant received adequate notice of a personal firearm use enhancement, and accordingly affirm.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

#### ***A. The Shooting***

After midnight on July 27, 2007, appellant and codefendant Jonathan Michael Warren, both members of the Southside Pasadena Gang, went to a residence on Navarro Street. David Mendez, Sergio Mendez, Joseph Vargas and other members of the Villa Boys Gang arrived at the residence on Navarro Street after celebrating at a night club.

At some point, appellant and codefendant Warren began to argue with the Villa Boys Gang members. During the argument, Villa Boys member Sergio Mendez pulled out a knife. Appellant began shooting at Sergio Mendez with a handgun; Mendez was shot twice in the back and killed. Appellant shot at David Mendez and his nephew Joseph Vargas. Joseph Vargas was struck by a bullet and died from a single gunshot wound to his chest. David Mendez and others attempted to throw objects at appellant. Appellant and Warren fled in a car.

*B. Arrest and Charges*

Appellant and Warren were arrested at appellant's house. During a search of the residence, police found a nine-millimeter handgun and several unspent nine-millimeter bullets.<sup>1</sup> Appellant was interviewed at the Pasadena Police Station where he initially denied his involvement. He later admitted that he committed the shootings because he was afraid he was going to be assaulted by some Villa Boys Gang members.

Appellant and codefendant Warren were each charged in counts one and two with murder (Pen. Code § 187) and in count four with robbery (Pen. Code, § 211). The amended information also alleged special circumstances as to counts one and two that the murders were carried out to further the activities of a criminal street gang (Pen. Code, § 190.2, subd. (a)(22)), and that there were multiple murders, one of which was in the first degree (Pen. Code, § 190.2, subd. (a)(3)). The amended information further alleged as to all three counts that the crimes were committed for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)) and as to counts one and two that a principal personally discharged a firearm causing death (Pen. Code, § 12022.53, subds. (d) and (e)(1)).

*C. Verdict, Sentencing and Appeal*

The jury found appellant guilty of second degree murder in counts one and two, and not guilty in count four. The jury found not true the gang enhancement allegations. The jury found true the appellant personally discharged a firearm causing death in counts one and two. Codefendant Warren was found not guilty of all charges.

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<sup>1</sup> A firearms examiner determined that the shell casings recovered at the scene and the bullets removed from the victim's bodies matched the handgun found at appellant's residence.

The trial court sentenced appellant to a total term of 40 years to life in prison. On count one, the court imposed a term of 15 years to life, plus 25 years to life for the personal discharge enhancement pursuant to Penal Code section 12022.53, subdivision (d). On count two, the court imposed an identical 40 years to life term to be served concurrently. Appellant timely filed a notice of appeal.

### ***DISCUSSION***

Penal Code section 12022.53 provides several enhancements applicable to the use of a firearm in the commission of murder, provided other specific acts are found. Penal Code section 12022.53, subdivision (d) provides for a sentence enhancement of 25 years to life to any person who personally and intentionally discharges a firearm and proximately causes bodily injury or death. A sentence enhancement under Penal Code section 12022.53, subdivision (e)(1) requires that a principal fired a shot causing great bodily injury for the benefit of a street gang under section 186.22.<sup>2</sup>

In this case, both appellant and codefendant Warren were charged in a joint trial for the deaths of Joseph Vargas and Sergio Mendez. The People alleged that a principal personally and intentionally discharged a firearm which proximately caused great bodily injury and death within the meaning of Penal Code section 12022.53, subdivision (d) and (e)(1). Appellant contends that because the People alleged that a *principal* personally fired a gun for the benefit of a street gang, appellant's due process rights were violated because he was not given notice that he was subject to a Penal Code section 12022.53, subdivision (d) sentence enhancement for his *personal* firearm use. We disagree.

Penal Code section 12022.53, subdivision (j) states in relevant part: "[f]or the penalties in this section to apply, the existence of any fact required under subdivision (b),

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<sup>2</sup> Penal Code section 12022.53, subdivision (e)(1) requires the principal in the offense committed any act specified in subdivision (b), (c), or (d) of section 12022.53.

(c), or (d) shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.” Thus, subdivision (j) requires only the *facts* necessary to sustain the enhancement in the alleged information. In the present case, the Penal Code section 12022.53, subdivision (d) enhancement was addressed in both the allegations and the facts of the case.

The face sheet of information entitled “INFORMATION SUMMARY” expressly notified appellant of the Penal Code section 12022.53, subdivision (d) special allegation subject to a 25 year to life enhancement. In addition, the information filed on April 24, 2008, and November 13, 2009, alleged “that a principal personally and intentionally discharged a firearm...within the meaning of Penal Code section 12022.53(d) and (e)(1).” Thus, appellant was given notice in both the information summary and in the allegations to adequately prepare for his defense of personal handgun use.

The accused is subject to a Penal Code section 12022.53, subdivision (d) enhancement despite failure to allege the enhancement, provided that appellant is given adequate notice elsewhere of this charge. (*People v. Riva* (2003) 112 Cal.App.4th 981, 1000-1004.) In *People v. Riva*, the court imposed a 25 years to life sentence enhancement under Penal Code section 12022.53, subdivision (d) on an underlying conviction for shooting at an occupied motor vehicle. The motor vehicle count did not allege this enhancement; however, the Penal Code section 12022.53, subdivision (d) enhancement allegation was pleaded as to manslaughter and assault counts. Thus, appellant had adequate notice of the personal use enhancement charge because the identical sentence enhancement was alleged on a different count. (*Ibid.*)

In the present case, appellant was given sufficient notice that he was charged with personal use of a firearm. First, appellant admitted to police he personally used the weapon. Appellant’s counsel was aware that the People sought to prove that appellant personally and intentionally fired shots the night of the incident. Appellant was unambiguously identified as the shooter at all times. In opening statements, appellant

was identified by both the defense and prosecution as the only shooter. At trial, appellant testified that he fired the shots and killed both victims.

Appellant's reliance on *Mancebo* is misplaced. (*People v. Mancebo* (2002) 27 Cal.4th 736.) The court in *Mancebo* imposed an enhancement that was never pleaded by name, number or description. In the present case, the personal use allegation under Penal Code section 12022.53, subdivision (d) was raised in the preliminary hearings, at trial and specifically pleaded by number and description in the information summary.

The record reflects allegations "as to count(s) 1 and 2 that a principal personally and intentionally discharged a firearm, a handgun, which proximately caused great bodily injury and death . . . within the meaning of Penal Code section 12022.53(d) and (e)(1)." Although the sentences for Penal Code section 12022.53, subdivision (d) and Penal Code section 12022.53, subdivision (e)(1) were not separately listed on the information, in our view, the pleading requirements were nevertheless met giving appellant adequate notice of the personal firearm use enhancement under Penal Code section 12022.53, subdivision (d).

Appellant argues that the phrase "principal personally and intentionally discharged a firearm" only relates to a Penal Code section 12022.53, subdivision (e)(1) enhancement for *principal* use of a firearm for the benefit of a street gang. However, these allegations applied to both appellant and codefendant Warren. At all times appellant was identified by both the defense and prosecution as the only party who shot and killed both victims. Thus, appellant was adequately informed of the personal firearm use enhancement.

Furthermore, the record is devoid of any objection to the language in the jury instructions and the verdict forms. The jury instructions and verdict forms included a separate finding on personal use of a firearm. Appellant argues that the jury instruction explaining Penal Code section 12022.53, subdivision (d) was not given to the jury. However, the court used CALCIM No. 3146 "Personally used Firearm," that set forth allegations that appellant personally used a firearm during the commission of the crime.

In view of the foregoing, we conclude that appellant received adequate notice of the enhancement for purposes of due process.

***DISPOSITION***

The judgment is affirmed.

**WOODS, J.**

**We concur:**

**PERLUSS, P. J.**

**JACKSON, J.**